

# EXHIBIT A

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MINNESOTA

3  
4 In re Bair Hugger Forced Air ) MDL No. 15-2666  
Warming Products Liability ) (JNE/FLN)  
5 Litigation, ) VOLUME I  
)  
6 ) PAGES 1-210  
7  
8  
9  
10  
11  
12

13 VIDEOTAPED DEPOSITION OF JONATHAN SAMET, M.D.

14 LOS ANGELES, CALIFORNIA

15 TUESDAY, JULY 11, 2017  
16  
17  
18  
19  
20  
21  
22  
23

24 Job No. 124786

25 DORIEN SAITO, CSR 12568, CLR

Page 6

1	I N D E X (continued)		
2	EXHIBITS:		
3	NUMBER	DESCRIPTION	PAGE
4	Exhibit 14	Article entitled "Patient Warming Excess Heat: The Effects on Orthopedic Operating Room Ventilation Performance" by Kumar G. Belani, Mark Albrecht, Paul McGovern and Christopher Nachtsheim, Ph.D.	182
5			
6	Exhibit 15	Article entitled "Forced-air warming blowers: An evaluation of filtration adequacy and airborne contamination emissions in the operating room" by Mark Albrecht, Robert L. Gauthier, M.D., Kumar Belani, Mark Litchy, M.E. and David Leaper, M.D.	184
7			
8			
9			
10			
11			
12	Exhibit 16	Article entitled "Arthroplasty, Do forced air patient-warming devices disrupt unidirectional downward airflow? By A.J. Legg, T. Cannon and A.J. Hamer	186
13			
14			
15	Exhibit 17	Article entitled "Arthroplasty, Forced-air patient warming blankets disrupt unidirectional airflow" by A.J. Legg and A.J. Hamer	188
16			
17			
18	Exhibit 18	Email from Mark Albrecht to Andrew Legg, M.D., Scott Augustine and Christopher Nachtsheim dated September 10, 2010	189
19			
20			
21			
22	Exhibit 19	Email from Mark Albrecht to Mike Reed and Paul McGovern dated July 9, 2010	197
23			
24			
25			

Page 7

1 LOS ANGELES, CALIFORNIA; TUESDAY, JULY 11, 2017

2 10:57 A.M.

3 -0o0-

4 \*\*\*

5 THE VIDEOGRAPHER: This is the start of

6 tape labelled Number 1 of the videotaped

7 deposition of Dr. Jonathan Samet in re Bair Hugger

8 Forced Air Warming Products Liability Litigation

9 in the United States District Court, District of

10 Minnesota, Case Number 15-2666(JNE/FLN).

11 This deposition is being held at

12 601 South Figueroa Street, Suite 2500,

13 Los Angeles, California, on Tuesday, July 11 of

14 2017 at approximately 10:58 a.m.

15 My name is Jordan Leads from TSG

16 Reporting, Incorporated, and I'm the legal video

17 specialist.

18 The court reporter is Dorien Saito in

19 association with TSG Reporting.

20 Will counsel please introduce yourselves.

21 MR. GORDON: Corey Gordon on behalf of

22 the defendants 3M Alizant. Also with me today is

23 Mordecai Boone, the in-house counsel #M as well as

24 Professor Jonathan Borak, experts.

25 MS. CONLIN: Jan Conlin and Mike Sacchet

Page 8

1 on behalf of the plaintiffs from Ciresi Conlin.

2 THE VIDEOGRAPHER: Thank you.

3 THE REPORTER: Would you raise your right

4 hand.

5 THE WITNESS: (Complies.)

6 THE REPORTER: Do you so state under

7 penalty of perjury that the testimony you shall

8 give in your deposition shall be the truth, the

9 whole truth, and nothing but the truth?

10 THE WITNESS: Yes, I do.

11 \*\*\*

12 JONATHAN SAMET, M.D.,

13 having been duly administered an oath

14 in accordance with CCP 2094, was

15 examined and testified as follows:

16 \*\*\*

17 EXAMINATION

18 BY MR. GORDON:

19 Q Good morning, Dr. Samet.

20 A Good morning.

21 Q As you know from our brief introduction a

22 moment ago, my name is Corey Gordon. And I'll be

23 asking you some questions today about the expert

24 opinions you proffered in the multidistrict litigation

25 pending.

Page 9

1 So you've had your deposition taken several

2 times before; is that correct?

3 A I have in the past, yes.

4 Q And you've testified as an expert witness in

5 litigation before; is that correct?

6 A That's correct.

7 Q Now, I know you've testified as an expert in

8 several cases involving the claims being made against

9 the tobacco industry.

10 Is that correct?

11 A That's correct.

12 Q Have you testified as an expert or offered --

13 well, strike that.

14 Have you testified as an expert in any cases

15 involving anything other than tobacco-related claims?

16 A To my recollection, solely tobacco.

17 Q And have you offered opinions maybe that

18 didn't lead to you ever having to give a deposition or

19 testimony in court outside of the tobacco arena?

20 A I would suspect if I looked back across a

21 long career, I've had lawyers contact me about a

22 variety of matters. At most these resulted in

23 conversations but nothing further.

24 Q I'm guessing that you've probably been

25 frequently asked by lawyers to serve as a consultant

Page 34

1 Q Did you -- do you know if you had occasion to  
2 look at any of the exhibits that were marked at the  
3 Augustine deposition?

4 A I don't know.

5 Q Well, let me be more specific.

6 Do you recall when you saw this Augustine  
7 paper that you brought up that you said you saw maybe  
8 ten days ago, when you looked at it, did -- did you  
9 look -- did anything trigger a thought in your mind  
10 that "Gee, this looks like something I've already" --  
11 "at least part of something that I've already seen  
12 before"?

13 A Not specifically, no.

14 Q That appeared to be like brand-new material?

15 A (Nodding head.) Yes.

16 Q So as you sit here today, do you have any  
17 information about the background of how that Augustine  
18 study came to be prepared, the underlying data, any --  
19 any -- any information about it other than what was  
20 represented by Dr. Augustine in the publication  
21 itself?

22 A To my -- to my memory, my -- my  
23 understanding, that paper is based on reading it.

24 Q Has that paper had any impact on your  
25 opinions?

Page 35

1 A I regard the paper as another piece of  
2 observational evidence that provides an estimate of  
3 risk of deep joint infection associated with the Bair  
4 Hugger device versus the comparison.

5 Q You -- ultimately, your opinion in -- the --  
6 the sort of the bottom line general opinion was that  
7 you concluded that the -- based on your  
8 epidemiological expertise, that the Bair Hugger -- use  
9 of the Bair Hugger in orthopedic surgery is a  
10 substantial contributing cause to the development of  
11 periprosthetic joint infection; is that right?

12 A That's the last sentence of my report,  
13 page 17.

14 Q I want to ask about this phrase "substantial  
15 contributing cause."

16 Is that a concept that's used in the field of  
17 epidemiology?

18 A Well, I think there are a number of different  
19 approaches taken to describe causation, strength of  
20 causation, contribution to cause. There's -- so I --  
21 it's -- it's a word that I have seen used or a phrase  
22 that I've seen.

23 Q It's not a phrase that you use, though;  
24 right?

25 A I think it would depend on the context.

Page 36

1 If -- this refers to the magnitude of excess risk. So  
2 it's a description based on the odds ratio of the  
3 strength of association.

4 Q You've written or co-authored hundreds of --  
5 of papers and studies that looked at odds ratios,  
6 attributable risk, and things like that, and drawn  
7 causal conclusions; right?

8 A In -- in -- in various activities and not  
9 specifically in the context of my papers. I've worked  
10 on reports and other expert documents that had causal  
11 conditions.

12 Q Would it surprise you that not one of your  
13 publications has ever used the phrase "substantial  
14 contributing cause"?

15 A I -- I'm not sure what the basis for your  
16 statement is, but...

17 Q Would you -- would it surprise you that if  
18 you were to search everything that you've written,  
19 that the phrase "substantial contributing cause," that  
20 exact phrase, never appears in anything that you've  
21 authored or co-authored?

22 A I really don't -- don't -- just don't have an  
23 opinion.

24 Q Well, wouldn't you agree that -- that the  
25 notion of something being a substantial contributing

Page 37

1 cause is not something that -- that you, at least in  
2 your professional activities as an epidemiologist,  
3 have looked at or -- or used as a reference point?

4 MS. CONLIN: Objection as to form --

5 THE WITNESS: Well --

6 MS. CONLIN: -- it mischaracterizes his  
7 testimony.

8 THE WITNESS: Well, again, I think in  
9 terms of the question of causation, there are  
10 two -- two issues.

11 One is, Does an agent cause whatever the  
12 outcome is that's being considered?

13 And the second is, What's the magnitude  
14 of its contribution to causation?

15 So certainly I've written about both  
16 aspects of causation; the question of Is an agent  
17 causal? And then second, What is its  
18 contribution?

19 BY MR. GORDON:

20 Q Well, what constitutes a substantial  
21 contributing cause as opposed to a contributing cause  
22 that isn't substantial?

23 A Well, you know, again, I don't have strict  
24 numerical criteria.

25 But here I think the basis for the